

**TRANSCRIPT OF RULING ON DETENTION HEARING  
BEFORE MAGISTRATE JUDGE JAMES E. GATES  
WEDNESDAY, DECEMBER 10, 2020; 10:56 AM  
RALEIGH, NORTH CAROLINA**

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## I N D E X

## 2 RULINGS:

Government motion for detention is granted.  
3 Government motion for exhibits to remain under  
seal until 4 o'clock 12/11/20 is granted.

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## Colloquy

1                   P R O C E E D I N G S

2                 THE CLERK: This court is now in session. The  
3                 Honorable Judge James E. Gates is presiding. Be seated and  
4                 come to order.

5                 THE COURT: Good morning, folks.

6                 MR. TARLTON: Good morning, Your Honor.

7                 MS. KOCHER: Good morning, sir.

8                 THE COURT: Before we turn to the Duncan matter, let  
9                 me refer to the case of United States v. Eric Alexander Glenn  
10               (ph.).

11               (Discussions off the record)

12               THE COURT: Very well, that takes us then to the  
13               Duncan matter. This is the case of United States v. Jordan  
14               Duncan. We had a -- it's really a continuation of the  
15               detention hearing in that proceeding. The evidence and  
16               argument was presented yesterday, and the purpose of the  
17               proceeding today is for the Court to announce its ruling with  
18               respect to the Government's motion for detention.

19               Let me note that I have reviewed carefully the  
20               evidence and argument that's been presented, and that did  
21               include review of the case law that defense counsel cited in  
22               his argument, the Brandenburg case, the Hess case, the NAACP  
23               v. Claiborne Hardware case, as well as the U.S. v. Rundo case  
24               out of the Central District of California and the specific  
25               order that I believe counsel had reference to, it's not

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1 published to my knowledge. He gave a Pacer cite, which was  
2 very helpful. It was accurate. It's at docket entry 145.  
3 There's a related order at docket 151, but the order that I  
4 believe Mr. Tarlton was referring to is at docket entry 145.  
5 And I did review all of that material.

6 Very good. Based on the record developed before me,  
7 I believe the law requires me to allow the Government's motion  
8 for detention. I do so, finding that the Government has shown  
9 by clear and convincing evidence that there's no condition or  
10 combination of conditions that would reasonably assure the  
11 safety of any other person in the community, and that by a  
12 preponderance of the evidence there's no condition of  
13 combination of conditions that would reasonably assure the  
14 appearance of the defendant as required.

15 Mr. Duncan, sir, my ruling does not affect the  
16 presumption of innocence which you will continue to enjoy at  
17 the trial in your case.

18 On a motion such as this, the Court is required to  
19 consider certain specific factors, and the Court has  
20 considered the factors the law requires it to consider. One  
21 is the weight of the evidence, and I believe that the  
22 Government does have a strong case against you. And I say  
23 that recognizing that the Government presented a lot of  
24 evidence relating to other defendants in this case, that while  
25 you -- the evidence depicted you as having a role in this

Colloquy

1       alleged conspiracy, I wouldn't say the evidence shows you were  
2       the leader of the conspiracy by any means. And again, much of  
3       the evidence related to other defendants.

4                 I'm also very sensitive to the First Amendment  
5       concerns that are the subject of the case law that I  
6       referenced, and that your very able counsel laid out in his  
7       argument. And notwithstanding that, and of course, I'm not  
8       here on a motion to dismiss the indictment or anything.  
9       That's further down the road, which was an issue in some of  
10      the case law that was presented.

11               I do think the Government has presented enough  
12      evidence to obtain a conviction. And you did have a role, and  
13      a specific role that was pointed to in the evidence was  
14      vetting new members to the conspiracy. There was evidence of  
15      that pallet, which was intercepted, I realize, but a pallet of  
16      equipment that was headed theoretically or seemed to be -- the  
17      evidence was it was headed your way, but it was intercepted.  
18      And there was other evidence tying you in specifically with  
19      this illicit manufacture of firearms. And so I think the  
20      Government does have enough evidence to obtain a conviction.

21               Regarding the nature and circumstances of the offense  
22      involved here, I've touched on some of this, but I think the  
23      evidence showed, even though while you were not the leader of  
24      this conspiracy, you did have significant involvement in it.  
25      You were not a simple bystander. There was meaningful

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1 involvement by you in it.

2                   And without looking at the -- really the underlying  
3 beliefs that motivate or the foundation of the ideology that  
4 is part of this -- that relates to the conspiracy, one can't  
5 help but note it was -- it's a -- there's a violence to it,  
6 very anti-government, anti the federal government specifically  
7 to it. Irrespective of the bases for that view there was  
8 training that was intended to seemingly prepare readiness to  
9 actually engage in violent conduct. There was a plan to -- a  
10 strategy, an overall strategy to do that.

11                  There were materials that you had. It was described  
12 as, I believe, a library on destructive devices, including  
13 information on chemical weapons, military manuals that the  
14 testimony was that you probably should not have had, certainly  
15 should not be using, in connection with the conspiracy.

16                  I note too that just as a -- and a lot of these  
17 considerations obviously relate directly to the risk of danger  
18 that's presented here. And I would include in that  
19 information in the chats that was presented where there was a  
20 seeming endorsement by you of violent conduct.

21                  And then I do note I don't want to -- I don't want to  
22 overstate the significance of this, but you did move from San  
23 Antonio to Boise, which became -- Mr. Kryscuk was already  
24 there, I believe. This activity really obtained a focus in  
25 Boise, and you moved from San Antonio to Boise. I know you

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1 had work in Boise, but you did make that move. That's a  
2 significant move, obviously.

3 In addition, your roommate was another person  
4 involved in this, another defendant, a codefendant and a co --  
5 alleged coconspirator. And I just say those things to -- I  
6 think that is some evidence of the depth of your involvement  
7 in this activity.

8 Regarding -- well, and I guess in connection with  
9 this -- this bleeds really into your history and  
10 characteristics. But I note that at the time of your arrest,  
11 I believe, it was found that you had a false ID, you had a DOD  
12 passport that, according to testimony here, you really should  
13 not have had, and that -- and obviously those matters relate  
14 specifically to flight risk.

15 Also bearing on flight risk is your background in  
16 intelligence and communications, because it would seem that  
17 that capability could be used to facilitate flight. You also  
18 are out of the Marine Corps, and I think some of those skills  
19 could obviously be used to facilitate flight. They also  
20 present a risk of danger to the extent that you elected to  
21 engage in violent conduct.

22 There was also testimony to the effect that you  
23 likely had not been candid in forms that were completed  
24 relating to your security clearance, that had you been candid  
25 in those forms, you would -- your security clearance would

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1 have been removed or canceled, whatever the proper term would  
2 be. And that's also of concern, lying to the government, to  
3 authorities could also be used to facilitate flight and  
4 represents also a potential danger.

5                 Regarding the nature and seriousness of the danger  
6 posed by your release, there's an obvious danger to some  
7 degree of participation in violent anti-government conduct.

8                 Regarding the suitability of your father -- of that  
9 custodial arrangement with your father, your father's  
10 obviously a suitable custodian. I think there's several  
11 things that contribute to this not being an adequate  
12 arrangement. I mean, most fundamentally, I think the risk of  
13 flight and danger here is too great to make that a reasonable  
14 alternative.

15                 But I do make note as well that according to the  
16 record before me you had effectively hid this side of your  
17 life, your involvement -- seemingly deep involvement in this  
18 conspiracy, your seemingly deep commitment to this anti-  
19 government view. And being anti-government is not a problem.  
20 But in assessing danger, the commitment to participate in  
21 violence is relevant, it seems to me, with respect to the risk  
22 of danger. And there seems -- this record suggests there's a  
23 real commitment on your part to that.

24                 In any event, you effectively hid this side of your  
25 life, your involvement in these views that you seemingly have

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1 and participation in related activities. Hid that from your  
2 father, I assume your mother as well, because he said he was  
3 unaware of it and was learning a lot of it for the first time  
4 in the courtroom. Also it's not ideal that the proposed  
5 custodial home would be a long distance from our court here,  
6 because obviously travel of that length would present  
7 opportunities to flee.

8                 And of course, a factor if I haven't made it clear  
9 with respect to flight is that the strong -- the seemingly  
10 strong anti-governmental -- anti-federal-government views  
11 would seemingly give somebody an incentive to avoid being  
12 subject to jurisdiction by that government as to which the  
13 person has a strong antipathy, and for whatever reason. The  
14 Court isn't looking at the basis for that antipathy, it's the  
15 fact of it that is of concern. And the flight -- I do believe  
16 that raises the risk of flight to avoid being subject to the  
17 jurisdiction of that system that the person is so strongly  
18 opposed to.

19                 I've considered the mitigating factors cited by your  
20 counsel, the fact that a job would be available to you. I  
21 think a legitimate concern raised by the Government was  
22 internet access. The argument was made without contradiction  
23 that that job would involve access to the internet, and the  
24 Government expressed concern about that. And I would share  
25 that concern in light of your capabilities with respect to

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1       internet activity gained through your specialization in the  
2       military in communications and intelligence. And that could  
3       be exploited to facilitate flight and perhaps participate in  
4       violent activity.

5                 And with respect to flight, let me just note this  
6       additional thought that there seemingly, based on this  
7       record -- there are others out there, notwithstanding that I  
8       realize this -- indictments against other folks, but certainly  
9       the -- I think implicit at least in the testimony was that  
10      there are others who share this view. And that provides a  
11      potential community of folks, perhaps nationwide, that could  
12      be turned to, to facilitate flight. And that is of concern to  
13      the Court.

14               I make note of the argument by your counsel that the  
15      maximum punishment statutorily is five years, and of course,  
16      with time off for good behavior it would be somewhat less than  
17      that. I've considered that. I still think that's -- to be  
18      imprisoned for up to -- even just short of five years, over  
19      four years is still a long time, even for a younger person.  
20      And I think that would provide some incentive to flee.  
21      Certainly we see longer potential sentences and certainly  
22      mandatory minimums that are longer in cases. But still, it's  
23      not a matter of months, of less than a year. It's not a  
24      misdemeanor. It's a felony, so it's potentially a matter of  
25      years.

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1               As I noted at the outset, I have considered your  
2 First Amendment rights throughout my analysis. The case law I  
3 would add, is the point made by the Government. They don't  
4 deal with detention. Those cases don't deal with detention  
5 hearings, and the assessment of flight risk and danger. But I  
6 have considered your First Amendment rights throughout,  
7 including but not limited to in connection with the weight of  
8 the evidence against you.

9               I'm aware that the probation office recommended  
10 release, and I did consider that. The probation office does  
11 not have the benefit of the full exposition of the evidence  
12 that a hearing provides. That's one reason why we hold  
13 hearings, but I did certainly consider its recommendation.

14               I do want to commend counsel for their excellent  
15 presentations with respect to this case.

16               Mr. Tarlton, anything further on behalf of Mr. Duncan  
17 for today?

18               MR. TARLTON: Thank you, Your Honor. Nothing further  
19 at this point in time, Your Honor.

20               THE COURT: Okay. Thank you, sir.

21               Ms. Kocher, ma'am, anything further for the  
22 Government at this time?

23               MS. KOCHER: Your Honor, I do have two -- one request  
24 and one notice to the Court. The disk that was submitted as  
25 Exhibit 7, excuse me, Your Honor.

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1                   THE COURT: Yes, ma'am.

2                   MS. KOCHER: Was password protected, and I failed to  
3 think about that yesterday. I have provided the password to  
4 the Court this morning.

5                   THE COURT: Oh thank you.

6                   MS. KOCHER: But I will also, and in conjunction with  
7 defense counsel, we'll provide an open disk for the record.

8                   THE COURT: Very well.

9                   MS. KOCHER: At a later time, and I'll exchange that.  
10 My request is if the Court would allow the exhibits submitted  
11 yesterday to remain sealed through the end of the day  
12 tomorrow, perhaps, to let me make certain that they are in  
13 full compliance with the rule and local rule in regard to  
14 personally identifying information therein and redact anything  
15 necessary. And again, I have spoken with counsel about that  
16 and would submit first to them the proposed redactions, and  
17 they would only be related to the types of subjects that,  
18 before they become public, the Court would want --

19                  THE COURT: Okay. Is it satisfactory, Ms. Kocher,  
20 for me to direct that they'll remain under seal until tomorrow  
21 at 5? Well, let's not say 5. I don't want to keep people here  
22 late that they wouldn't otherwise have to. Let's say 4  
23 o'clock, and then at that point, if the Government does not  
24 file a motion seeking permanent sealing and redacted copies,  
25 then they will be unsealed without further order of the Court.

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1                   MS. KOCHER: And I would file a notice either way,  
2 Your Honor.

3                   THE COURT: Okay, that would be great.

4                   MS. KOCHER: To not keep -- yes.

5                   THE COURT: Okay. Well, I so direct.

6                   MS. KOCHER: Thank you, sir.

7                   THE COURT: And Mr. Tarlton, counsel indicated you  
8 had no objection to that? Let me just clarify.

9                   MR. TARLTON: No objection, Your Honor.

10                  THE COURT: Okay, very good. Thank you, sir.

11                  Very good. Well, at this time, I remand Mr. Duncan  
12 to the custody of the United States Marshal pending further  
13 proceedings in this case.

14                  (Court is adjourned)

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Dated this 12th day of January, 2021.

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/s/ *Tamara Bentzur*

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